

REMARKS

Claims 1 and 7 are amended and claim 2 is canceled. Support for the amendment to claim 1 is found in original claim 2. The amendment to claim 7 is editorial in nature. Hence no issues of new matter are presented. Upon entry of the Amendment claims 1 and 3-7 will be all the claims pending.

I. Response to Claim Rejections Under 35 U.S.C. § 102

Claims 1 and 3-7 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Winter '061. According to the Examiner, Winter discloses an easily peelable multilayer film, which contains a sealing layer of a polyester resin that is adjacent to a layer of either an ethylene methacrylate (EMA) or ethylene vinyl acetate (EVA).

Applicants respectfully submit that Winter does not anticipate the claimed invention as recited in amended claim 1. Winter does not teach an ethylene content of 50 to 85% by weight in the ethylene copolymer and therefore does not teach all elements of the claimed invention. Accordingly, Applicants respectfully request withdrawal of the rejection.

II. Response to Claim Rejections Under 35 U.S.C. § 103

A. Winter in view of Charrier

Claim 2 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Winter in view of Charrier. The Examiner recognizes that Winter does not teach the specified ethylene content of 50-85% by weight of the recited ethylene copolymer. To remedy this deficiency, the Examiner asserts that Charrier discloses that commonly sold EVA copolymers contain 55-60% ethylene, which is within the presently claimed range. It is the Examiner's position that it would

have been obvious to one of ordinary skill in the art to use a commonly sold EVA polymer in the invention disclosed by Winter to suitably bond the backing layer to the sealing layer.

Claim 2 is canceled herein and therefore the rejection of claim 2 is moot. Applicants address the rejection however, as it may apply to the present claims.

Applicants respectfully traverse the rejection and submit that the Examiner has not made a *prima facie* showing of obviousness. It has been established that motivation or a suggestion to modify or combine references must be found within the references to establish *prima facie* obviousness. In this case, there is no motivation or suggestion to modify the disclosure of Winter or to combine the teachings of Winter and Charrier. Applicants respectfully submit that one of ordinary skill in the art would not have been motivated to combine the heat sealable films useful as the inside lining of a popcorn bag of Winter with Charrier as suggested by the Examiner, since Charrier discloses commercial EVA rubbers useful for hose products, roll covers, tank linings, wire and cable covers, footwear, and building products. Nor, would one of ordinary skill in the art have been motivated to combine the references as suggested by the Examiner with a reasonable expectation of success in achieving the claimed heat-sealable film of the present invention.

B. Genske et al in view of Willham et al

Claims 1 and 3-7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Genske et al in view of Willham et al. The Examiner asserts that Genske et al disclose a multilayer film for use as lidstock in a food packaging application. The Examiner recognizes that Genske et al does not teach a sealing layer, which comprises polyester or the claimed thickness of the sealing layer. To remedy this deficiency, it is the Examiner's position that one

of ordinary skill in the art would have been motivated to use a polyester sealing layer in the disclosed invention of Genske et al to provide a heat-sealing layer that was sealable at low temperatures.

Applicants respectfully traverse the rejection. Neither Genske et al not Willham teach an ethylene content of 50 to 85% by weight in the ethylene copolymer. Therefore, Genske et al and Willham et al, taken alone or in combination, do not teach all elements of the claimed invention as recited in amended claim 1. Therefore the present claims are distinguished over Genske et al and Willham et al. Accordingly, Applicants respectfully request withdrawal of the rejection.

C. Genske et al in view of Willham et al and further in view of Charrier

Claim 2 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Genske et al in view of Willham et al and further in view of Charrier.

Claim 2 is canceled herein and therefore the rejection of claim 2 is moot. Applicants address the rejection however, as it may apply to the present claims.

Applicants submit that Genske et al teaches away from the present invention. Genske et al discloses a multi-layer film suitable for livestock containers comprising an outer sealant layer (20), adjacent sealant layer (22), adhesive layer (26), and a polymer layer (38), which may be a polyester heat resistant film. *See*, Fig. 2 and col. 4, lines 27-34. Genske et al also teaches that the composition of the container and the outer sealant layer are substantially similar to one another (col. 4, lines 61-63), but that the container and or the base film should have a sealant layer with a composition having a majority of propylene or ethylene moieties to match the predominant composition in the first outer sealant layer of the film structure that is the subject of the invention. (Col. 3, lines 39-43; *see also* col. 4, line 67-col. 5, line 3 and col. 5, lines 30-33).

Thus, Genske et al teaches away from using a sealing layer comprising a polyester resin as presently claimed. Therefore, one of ordinary skill in the art would not have been motivated to modify the disclosure of Genske et al by substituting a polyester heat sealing layer as disclosed by Wilham et al as suggested by the Examiner.

Further, Applicants submit that one of ordinary skill in the art would not have been motivated to combine the disclosure of Genske et al and/or Wilham et al for making heat sealable films useful as easy peel film structures for retortable lidstock and Charrier as suggested by the Examiner, since Charrier discloses commercial EVA rubbers useful for hose products, roll covers, tank linings, wire and cable covers, footwear and building products.

Accordingly, Applicants respectfully request withdrawal of the rejection.

D. Genske et al in view of Winter

Claims 1 and 3-7 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Genske et al in view of Winter, each of which are applied as previously discussed. It is the Examiner's position that it would have been obvious to one of ordinary skill in the art to use a polyester sealing layer in the invention

Applicants respectfully submit that neither Genske et al nor Winter teach an ethylene content of 50 to 85% by weight in the ethylene copolymer. Therefore, Genske et al and Winter, taken alone or in combination, do not teach all elements of the claimed invention as recited in amended claim 1. Therefore the present claims are distinguished over Genske et al and Winter. Accordingly, Applicants respectfully request withdrawal of the rejection.

E. Genske et al in view of Winter and further in view of Charrier

Claim 2 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Genske et al in view of Winter and further in view of Charrier.

Claim 2 is canceled herein and therefore the rejection of claim 2 is moot. Applicants address the rejection however, as it may apply to the present claims.

Applicants submit that the present invention is distinguished over Genske et al in view of Winter for the reasons stated above. Further, one of ordinary skill in the art would not have been motivated to combine the disclosure of Genske et al and/or Winter for making heat sealable films useful as easy peel film structures for retortable lidstock and Charrier as suggested by the Examiner, since Charrier discloses commercial EVA rubbers useful for hose products, roll covers, tank linings, wire and cable covers, footwear and building products.

Accordingly, Applicants respectfully request withdrawal of the rejection.

III. Conclusion

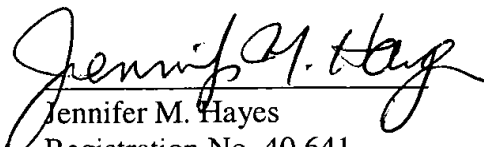
In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Amendment Under 37 C.F.R. § 1.111
U.S. Application Ser. No. 09/987,163

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 2 is canceled without prejudice or disclaimer.

The claims are amended as follows:

1. (Amended) An easily-peelable film, which comprises a sealing layer having ~~the~~ a thickness of 1 to 20 μ m comprising a polyester resin, and a layer adjacent to the sealing layer ~~and comprising~~ which comprises at least one kind of ethylene copolymer selected from the group consisting of an ethylene/unsaturated carboxylic ester copolymer and an ethylene/vinyl acetate copolymer, wherein the ethylene content of the copolymer is 50 to 85% by weight.
7. (Amended) A packaging body comprising a lid member as defined in claim 6.